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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1678

FEDERAL POWER COMMISSION,
Petitioner,

v.

MISSISSIPPI PUBLIC SERVICE COMMISSION, *et al.*,
Respondents.

RESPONSE OF MISSISSIPPI RIVER TRANSMISSION CORPORATION IN SUPPORT OF GRANT OF A WRIT OF CERTIORARI

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Pursuant to Rule 21 of the Court, Respondent Mississippi River Transmission Corporation ("MRTC") hereby files its response in support of the petition for a writ of certiorari filed by the Federal Power Commission ("FPC") on May 19, 1976 and received by counsel for MRTC on May 20, 1976.

JURISDICTION, STATUTES INVOLVED, AND STATEMENT OF THE CASE

MRTC adopts the statements of Jurisdiction (Pet., p. 2), Statutes Involved (Pet., pp. 2-5), and Statement of the case (Pet., pp. 5-9) set forth in FPC's petition.

QUESTIONS PRESENTED

Whether, in connection with its approval of curtailment plans to be observed by pipeline companies, the FPC has the authority to impose a compensation scheme whereby higher-priority, jurisdictional resale customers would compensate lower-priority, non-jurisdictional direct sale customers for increased costs of alternate fuels used by such non-jurisdictional customers as the result of proportionately greater curtailment of natural gas deliveries to such non-jurisdictional customers.

REASONS FOR GRANTING THE WRIT

MRTC agrees with the FPC's assertion that the compensation issue presented by this case is of substantial importance in the administration of the Natural Gas Act. As noted in FPC's petition (p. 10), the question of compensation features in pipeline curtailment plans has arisen in numerous proceedings before the FPC and doubtless will continue to do so until the controversy regarding the scope and extent of FPC's jurisdiction with respect to such matters is settled by this Court.[1] Accordingly, MRTC submits that this Court should consider the issue ***now***, in this proceeding, in order to prevent needless administrative and judicial litigation involving the compensation issue on a piecemeal, case-by-case approach.

The facts of the instant case involve the comparatively narrow issue of whether or not it is beyond FPC's jurisdiction to impose a provision in a curtailment plan requiring

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[1]On page 10 of its petition, FPC lists various administrative proceedings which it states involve compensation schemes. Among those listed is the proceeding involving MRTC's curtailment plan. Although not directly involved in the instant case, MRTC submits that the feature of its curtailment plan to which the FPC refers is not a compensation provision beyond the scope of the FPC's jurisdiction because it does not involve the FPC in the determination of rates paid to or by non-jurisdictional direct sale customers.

jurisdictional customers to compensate ***non-jurisdictional*** customers for proportionally greater curtailments of gas deliveries to the latter. MRTC submits that such a provision would exceed the FPC's jurisdiction in that it would directly involve FPC in the establishment of effective rates or charges for non-jurisdictional sales, a power specifically denied it under the Natural Gas Act.

The Court below and the FPC (in its petition) dealt with the issue upon a much broader basis and phrased the issue in terms of whether or not ***all*** compensation plans are ***per se*** unlawful. In its petition (p. 7) FPC notes that, in its order denying rehearing in the instant case, it incorporated the analysis contained in two orders in an unrelated curtailment case.[2] That case primarily involved compensation payments between ***jurisdictional*** customers.

MRTC submits that compensation payments as between jurisdictional and non-jurisdictional customers should be held to be unlawful, but that compensation payments involving jurisdictional sales should not be ruled ***per se*** unlawful, but should be tested under the just and reasonable rate standards of the Natural Gas Act. MRTC further submits that without badly needed guidance from this Court with respect to the issue of permissible versus impermissible compensation features in curtailment plans of pipeline companies, the FPC, pipeline companies, and direct and indirect customers of such companies will be forced to continue in a morass of needless litigation.

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[2]*Transcontinental Gas Pipe Line Corp.*, Docket No. RP72-99. That case has been before this Court, but not on the merits, in *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.*, No. 75-584.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MISSISSIPPI RIVER TRANSMISSION CORPORATION

By /s/ Wm. W. Bedwell

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing "Response Of Mississippi River Transmission Corporation In Support Of Grant Of A Writ Of Certiorari" by First Class Mail on the following parties:

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Dated in Washington, D.C. this 11th day of June, 1976.

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